

**K. I. MUHIUDEEN RAWTHER v. K. E. P.
ABDUL KASSIM & ORS.**

[O.C.J. (Ong J.) September 7, 1959]

[K.L.—Originating Summons No. 106 of 1959]

Land Laws — Caveat — Application for extension of time after lapse — Whether Court has jurisdiction to make order asked for — Land Code (Cap.138), ss.171, 172, 174 and 240 — R.S.C., 1957 O.54 r.12 — “Jurisdiction” and “power” of Judge explained.

Once a caveat has lapsed and a memorial is made by the registering authority it is extinguished forever. The Land Code does not give the Court power to revive, renew or continue a caveat after its lapse; the extinction is final and irrevocable, and it is not within the inherent jurisdiction of the Court to make orders which go beyond the limits of the powers expressly given to it by statute. No argument *ab inconvenienti* or on the ground of injustice that may arise by reason of a refusal by the Court to resuscitate a dead caveat can justify any construction modifying the strict literal interpretation of section 171 of the Land Code.

Upon a proper case being made out, the assistance of the Court may always be invoked to preserve the *status quo* by injunction, though, an injunction, operating *in personam*, is not as effective as a caveat in giving notice to the whole world of the caveator's claim to or in the land, and may be completely ineffectual to prevent a disposal of the land so as to defeat the claimant.

Section 240 of the Land Code only declares in general terms the power of the Court to direct the proper registering authority “to make any memorial, or otherwise to do such acts or make such memorials as may be necessary to give effect to the judgment or order of the Court.” This section is confined to directions giving effect to a final judgment or order of the Court, and has no application to interlocutory matters. In particular, where powers have been given expressly, this section cannot be interpreted so as to enlarge those powers: *generales specialibus non derogant*.

Order 54 r.12 of the Rules of the Supreme Court does not and cannot give the Registrar or Senior Assistant Registrar the powers given to the Court under the Land Code.

Jurisdiction upon a matter in which a Judge had power to adjudicate ought to be distinguished from the powers given to the Judge under the Land Code. Jurisdiction and power are not terms which are synonymous and interchangeable.

Cases referred to:—

- (1) *Chow E Wa v. Registrar of Titles* [1948-49] M.L.J. Supp. 114.
- (2) *Lee Lee Cheng v. Seow Peng Kwang* F.M. Civil Appeal No. 54 of 1958. *

APPLICATION for extension of time under section 172 of the Land Code.

M. Edgar for the applicant.

R. Ramani for the respondents.

The facts and arguments appear sufficiently from the judgment.

Ong J.: This is an application by a caveator for extension of time under section 172 of the Land Code, but differs from the ordinary run of applications of this nature in that the application came up for hearing nineteen days after the caveat had lapsed. It is the submission of Counsel for the applicant that the Court has jurisdiction, notwithstanding that the caveat had

A lapsed and been removed from the register, to make the order asked for.

On May 1, 1959 the applicant had lodged a caveat against two pieces of land registered in the names of the three respondents as proprietors, claiming a beneficial interest therein on the ground that the lands had been purchased in the name of one K.E. Packeer Mohideen with moneys of a partnership of which the co-partners were the applicant and the said Packeer Mohideen, who is the respondents' father, and by whom the lands were transferred to them without valuable consideration.

On June 29, 1959 the applicant was served with a notice in the form prescribed in Schedule XXXVII requiring that the caveat be withdrawn within 21 days, and stating that after the lapse of 21 days from the date of service the Registrar of Titles would remove the said caveat and record its discharge unless he should have been previously served with an order of the Court extending the time as provided in the Land Code.

The applicant filed his application on July 13, but the summons, for some unexplained reason, was issued returnable on July 23 before the Registrar in Chambers. On that date Counsel for the applicant appeared: the respondents did not appear in person or by Counsel. The Senior Assistant Registrar quite properly did not deal with the application for obvious reasons. First, the 21 days had lapsed on July 20; and secondly, an order for extension of time under section 172 clearly cannot be made by the Senior Assistant Registrar, but only by a Judge. Order 54 rule 12 of the Rules of the Supreme Court does not and cannot give to the Registrar or Senior Assistant Registrar the powers given to the Court under the Land Code.

This matter having been brought to my attention by the Senior Assistant Registrar and by Counsel, I gave directions for it to be brought up before me for hearing in Chambers. Counsel for the parties duly attended at the hearing on August 7.

Mr. Edgar, for the applicant, referred me to *Chow E Wa v. Registrar of Titles* ⁽¹⁾ as authority for the proposition that I have jurisdiction to make the order sought. In that case an order under section 172 had been made on August 23, 1948 extending the life of the caveat up to and including September 16, but no further. On September 15 the caveator filed action and on the following day filed his application by way of summons for further extension of the caveat until judgment in the action or further order of Court. On September 17, the Registrar of Titles duly made a memorial on the register under section 174, as he was bound to do, that the caveat had lapsed by virtue of the terms of the order of August 23. On September 20, however, when the application came on for hearing, Russell J. made the order for extension of time as prayed. It was clear that the learned Judge knew the caveat had lapsed three days previous to his order, although he was not aware that the

* The report of this case will be published in January [1960] M.L.J.

Registrar of Titles had on September 17 made "a memorial that the same is discharged" in accordance with the provisions of sections 171 and 174.

Upon a reference to Court by the Registrar of Titles under section 238 of the Land Code, Briggs J. held that section 174 was mandatory on the Registrar of Titles and ordered that he do register the order of Russell J. made on September 20. On appeal, the decision of Briggs J. was affirmed except that part of his order which declared that the order of Russell J. had the effect of reviving, renewing or continuing the caveat.

That decision of the Court of Appeal is clearly binding on me in so far as it decides that under section 174 of Land Code the proper registering authority is bound to make a memorial on the register of an order of Court. It is, however, no part of the *ratio decidendi* binding on me that the Court of Appeal was of opinion that Russell J. had "jurisdiction to make the order in the sense that the parties were properly before him upon a matter in respect of which he had power to adjudicate:" (*per Willan C.J. at p. 121*).

With the greatest respect, I think jurisdiction upon a matter in which a Judge had power to adjudicate ought to be distinguished from the powers given to the Judge under the Land Code. Jurisdiction and power are not terms which are synonymous and interchangeable. Support for this view can be found in the recent unreported judgment of the Court of Appeal in *Lee Lee Cheng v. Seow Peng Kwang* ⁽²⁾ where Thomson C.J., in discussing section 47 of the Courts Ordinance and the Second Schedule thereto, says:

"It is axiomatic that when different words are used in a statute they refer to different things and this is particularly so where the different words are, as here, used repeatedly. This leads to the view that in the Ordinance there is a distinction between the jurisdiction of a Court and its powers, and this suggests that the word "jurisdiction" is used to denote the types of subject matter which the Court may deal with and in relation to which it may exercise its powers. It cannot exercise its power in matters over which, by reason of their nature or by reason of extraterritoriality, it has no jurisdiction. On the other hand, in dealing with matters over which it has jurisdiction, it cannot exceed its powers."

Section 171 lays down in the clearest of terms that, upon the caveatee making an application in writing for removal of a caveat,

"The proper registering authority shall serve notice in writing in the Form in Schedule XXXVII on the caveator requiring that the caveat be withdrawn within twenty-one days, and after twenty-one days from the date of service of such notice at the address mentioned in the caveat the proper registering authority shall remove such caveat by making a memorial that the same is discharged unless he shall have been previously served with an order of Court extending the time as herein provided."

The section is thus mandatory on the registering authority to remove the caveat unless, before the caveat lapses on the expiry of the

twenty-one days, he shall have been served with an order of Court extending the time. Nowhere in Part XIII, nor elsewhere in the Land Code, do I find any provision giving the Court power to revive, renew or continue a caveat after its lapse. The extinction is in my view final and irrevocable. It is not within the inherent jurisdiction of the Court to make orders which go beyond the limits of the powers expressly given to it by statute and that proposition is self-evident.

Briggs J., who had had very considerable previous experience at the Bar, observed that he himself knew of no case where the Court had been asked to revive, renew or continue a lapsed caveat. My opinion for many years has been — and nothing that has fallen from Briggs J. or the Court of Appeal has caused me to revise it — that once a caveat has lapsed and a memorial is made by the registering authority it is extinguished for ever.

In my view no argument *ab inconvenienti* or on the ground of injustice that may arise by reason of a refusal by the Court to resuscitate a dead caveat can justify any construction modifying the strict literal interpretation of section 171, the terms of which are perfectly clear. The answer to such argument is that the legislature has seen fit to lay down the limit of twenty-one days as reasonable and sufficient for the caveator to make his application for extension of time under section 172. Furthermore, upon a proper case being made out, the assistance of the Court may always be invoked to preserve the *status quo* by injunction, though, of course, an injunction, operating *in personam*, is not as effective as a caveat in giving notice to the whole world of the caveator's claim to or in the land, and may be completely ineffectual to prevent a disposal of the land so as to defeat the claimant.

Lastly, section 240, in my view, only declares in general terms the power of the Court to direct the proper registering authority "to make any memorial, or otherwise to do such acts or make such memorials as may be necessary to give effect to the judgment or order of the Court." In my view, this section is confined to directions giving effect to a final judgment or order of the Court, and has no application to interlocutory matters. In particular, where powers have been given expressly, this section cannot be interpreted so as to enlarge those powers: *generales specialibus non derogant*.

Having come to this conclusion no purpose is served by discussing Mr. Ramani's contention on another point, namely, that applicant is not entitled to have a caveat put on at all. My opinion on the subject would be merely obiter.

The application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Bannon & Bailey; Braddell & Ramani.*